

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MARTIN E. CROCKER)	
Claimant)	
VS.)	
)	Docket Nos. 225,532 & 225,148
CHARLOMA FIBERGLASS COMPANY, INC.)	
Respondent)	
AND)	
)	
HARTFORD INSURANCE COMPANY)	
Insurance Carrier)	
)	

ORDER

Respondent appeals from an Award entered by Administrative Law Judge Jon L. Frobish on February 21, 2000.

APPEARANCES

William L. Phalen of Pittsburg, Kansas, appeared on behalf of claimant. Garry W. Lassman of Pittsburg, Kansas, appeared on behalf of respondent and its insurance carrier.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

The Award grants claimant a 23 percent permanent partial disability based on the opinions of orthopaedic surgeon Dr. Edward J. Prostic. The treating physician, Dr. John B. Moore IV, assessed a 16 percent permanent impairment rating to the right forearm, but did not assign any permanent impairment to the left. The court ordered an independent medical examination by Dr. Thomas P. Phillips who gave a 9 percent rating to the body as a whole. On appeal, respondent contends claimant is entitled to a permanent disability award for a scheduled injury to the right forearm only or, if there is a permanent impairment to the left forearm, then the award should be based on the rating by the court ordered examining physician, Dr. Phillips.

Claimant raised no additional issues, contending the Award entered by the ALJ should be affirmed.

This case involves two docketed claims. Both alleged a general body disability from injuries to both hands, wrists and arms. The ALJ awarded benefits for a single series of accidents using the last date claimant worked, January 29, 1997, as the date of accident.¹ Neither party raises an issue concerning the ALJ's conclusion in this regard and, therefore, the Board affirms the finding of one accident.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes the Award should be affirmed.

The Board agrees with and adopts as its own the findings and conclusions stated by the ALJ in his Award. The parties agree that claimant suffered accidental injury arising out of and in the course of his employment with respondent. A carpal tunnel release surgery was performed on the right upper extremity by Dr. Moore. Respondent agrees this surgery was reasonable and necessary treatment for the work related injury. The issue concerns the permanency of the injury to the left upper extremity, the extent of any resulting disability as to each upper extremity and whether claimant's functional impairment was worsened by his subsequent work activities with a different employer.

Respondent contends that Dr. Prostic's 23 percent rating is not credible, in light of the successful surgery on the right, claimant's exaggerated pain complaints and Dr. Moores' failure to assign a permanent functional impairment rating to the left upper extremity. Also, Dr. Prostic was the only physician to diagnose thoracic outlet syndrome. Claimant presents in contravention that the 9 percent rating by Dr. Phillips was based upon an incomplete examination and failed to properly consider claimant's loss of grip strength. Work disability is not an issue.

Of the three physicians that testified, Dr. Prostic examined the claimant first and last. His, therefore, was the examination closest in time to claimant's injury and, in addition, he had the opportunity to compare and ascertain claimant's condition post-treatment. Furthermore, the Board agrees that the examinations by Dr. Prostic were thorough and his ratings justified, and for the reasons stated in the Award, affirms the finding of a 23 percent general body disability.

¹ Although the ALJ found January 29, 1997 was claimant's last day of work with the respondent, the Award uses July 29, 1997 as the date of accident. This was apparently a typographical error. The last date claimant worked was January 29, 1997 and this is also the accident date for the series of accidents.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Jon L. Frobish dated February 21, 2000, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of July 2000.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: William L. Phalen, Pittsburg, KS
Garry W. Lassman, Pittsburg, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director